in considering the question of fair play, I think the ball was at the liquidators' feet: it was their duty to play fair and assist the court by explaining the correct position to the court and acquainting the court with all the material facts and answering the allegations made by the plaintiff so as to leave the court in no doubt that what was done was done with reference to the real, substantial and honest interest of the liquidation and to the general advantage of those interested in the assets of the company. This I must state quite categorically has been denied me. Quite obviously the liquidators have failed to discharge the onus.

I have also considered the question raised by learned counsel for the defendants that the liquidation of the company has almost been completed. I would like to refer again to the *Bond* case where during the application before the court, Mr. Nelson, the liquidator offered to give an undertaking to the court to the effect that he would take no objection to the institution of any proceedings against him in respect of any alleged misfeasance and to abstain from procuring a dissolution of the company for any reasonable period in order to permit the institution and prosecution of such proceedings. Needless to add, the offer of Mr. Nelson was accepted.

The plaintiff commenced these proceedings on August 8, 1977. No such undertaking was offered by the defendants, on the contrary they proceeded to wind-up the company oblivious to the fact that the plaintiff had already instituted proceedings. The liquidator must be independent and impartial: see *Re: Reberton Pty. Ltd.* decided on April 24, 1978 by the Supreme Court of New South Wales and commented upon in (1978) *Butterworths Company Law Bulletin* page 99.

I am satisfied that a *prima facie* case of misfeasance has been made out against the directors of the company. I am also satisfied from the foregoing that the applicant has shown due cause that it is for the general advantage of those interested in the assets of the company that the 1st defendant should be removed as liquidator of the company and I so order.

It must follow that since the 2nd and 3rd defendants are partners of the 1st defendant insofar as they belong to the same firm of accountants, the order must also extend to them. There will be an order in terms of the originating summons.

Order accordingly.

Solicitors: *Lee & Lee; Donaldson & Burkinshaw.*

BUI VAN TUYEN & ANOR. v. OVERSEAS UNION ENTERPRISE LTD.

[O.C.J. (Choor Singh J.) April 16, 1979]

[Singapore — Civil Suit No. 1538 of 1976]

Torts — Negligence — Damages — Claim for damages for loss of goods in hotel suite — Theft consequent upon loss of key to suite.

Hotel — Negligence — Duty to take proper care of door key.

The plaintiffs claimed from the defendants damages amounting to $616,379.30 for the loss of their goods which were stolen from their hotel suite. The defendants were the owners of the said hotel.

Evidence revealed that the plaintiffs, wealthy Vietnamese, checked into the hotel and were given suite 2626. The first plaintiff claimed that she placed all her jewellery in her crocodile handbag which she placed under some clothing in her suitcase and locked it. The door to the hotel suite was locked and the only ones who had access to it, apart from the plaintiffs themselves, were the cleaning maids. A hotel security guard was placed at the corridor outside the plaintiffs' suite. On the actual day of the theft, the second plaintiff claimed that he handed the key of their suite to the hotel's receptionist, one Christopher Chiang who placed the key in the key slot.

Investigations revealed that a European man was in suite 2626 while the plaintiffs were away at lunch. On their return to the suite, they found that it had been ransacked. The suitcases had been forced open and the contents of the crocodile handbag had disappeared.

Held: (1) the plaintiffs had made out a *prima facie* case based on the tort of negligence. The key gave access to the plaintiffs' suite and it was the duty of the defendants to take reasonable care to see that it was not taken by any unauthorised person. It was so taken and consequences followed which might reasonably have been foreseen — a thief used it to get into the plaintiff's suite and steal;

(2) in the circumstances of this case, the failure of the plaintiffs to deposit their jewellery and other valuables in the safe deposit box of the defendants did not constitute negligence on their part.

Cases referred to:-

(1) *Carpenter* v. *Haymarket Hotel Ltd.* [1931] 1 K.B. 364
(2) *Shacklock* v. *Ethorpe Ltd.* [1939] 3 All E.R. 372.
(3) *Williams* v. *Linnitt* [1951] 1 All E.R. 278.
(4) *Olley* v. *Marlborough Court, Ltd.* [1949] 1 All E.R. 127, 134.
(5) *Cashill* v. *Wright* 119 E.R. 1096, 1099.

CIVIL SUIT.

L.A.J. Smith (*Patrick Ong* with him) for the plaintiffs.

J. Grimberg (*Robert Yap* with him) for the defendants.

Cur. Adv. Vult.

Choor Singh J.: In this action the plaintiffs claim from the defendants the sum of S$616,379.30 being damages for the loss of their goods, i.e. wearing apparel, jewellery ornaments, moneys and cheques which were stolen on April 1, 1975 from a suite occupied by them at the defendants' hotel called "The Mandarin Hotel" at No. 333 Orchard Road, Singapore.

The facts are very simple and they are these. The second plaintiff is the husband of the first plaintiff. They are both Vietnamese and have extensive investments in Vietnam as well as in Europe but they live in Paris. Before the fall of Saigon the husband

had an industrial complex in Cholon, Saigon. He also had a housing estate there. His wife was the active Chairman of a bank in Saigon. They appear to be exceedingly well to do. The husband says that he is a ship owner and owns 12 ships. They claim that both of them travel a lot in the course of their business.

On March 31, 1975 the plaintiffs arrived in Singapore, by air, from Bangkok and checked into the Mandarin Hotel. With them was the second plaintiff's mother. They were given a suite on the 26th floor. On the night of March 31 they did not go out. Next morning they had breakfast in the sitting room of their suite. After breakfast a Mrs. Lim who is a cousin of the first plaintiff came to visit them. The plaintiffs together with the second plaintiff's mother and Mrs. Lim went in a taxi on a short tour of Singapore. Before going on the tour the first plaintiff placed all her jewellery in her crocodile handbag which she placed under some clothing in her suitcase and locked it. The second plaintiff locked the door of their suite. As they were leaving they saw a security guard in front of their suite. All of them went down to the lobby and the second plaintiff handed the key of their suite to a receptionist, Miss Georgianna Danker. He told her that he would be back in an hour and saw her place the key in the key slot.

When they returned from the tour the second plaintiff collected the key from Miss Danker and all of them went up to their suite. The plaintiffs were invited to lunch by two of their business acquaintances named T.K. Koh and Y.C. Chung who requested the plaintiffs to meet them in the lobby of the hotel at lunch time.

At about 12.20 p.m. two maids came to their suite to clean it and arrange their beds. They were allowed to do so. The plaintiffs then decided to come down for lunch and wait in the lobby for their hosts. Before they went out of their suite, the first plaintiff locked her suitcase which had a combination lock. Her jewellery in her crocodile handbag was left under some clothing in the suitcase which was locked. As all of them came out of their suite they saw a third maid with a cleaning cart in the corridor near their door. They also saw a security guard standing near her. The second plaintiff wanted to lock the door of their suite but this third maid told him not to do so. Accordingly the second plaintiff did not lock the door. At this point the first plaintiff told her husband to re-check her suitcase once more to make sure that it was locked. He did that and then as they were leaving for lunch they saw that the security guard was still there standing in the corridor outside their suite. The second plaintiff spoke to the security guard, complimented the hotel and told him that the Mandarin Hotel was a very safe hotel. The guard replied that they were on duty day and night. Then the four of them went down in the lift to the lobby. The second plaintiff says that he handed the key of their suite to a receptionist Christopher Chiang who placed the key in the key slot, Christopher Chiang denies this. His version is that the second plaintiff placed the key on the reception counter about four feet from him and went away.

The plaintiffs met their hosts in the lobby and they went up to the Pine Court Restaurant on the 36th floor to have lunch. After lunch the party came down to the lobby and the plaintiffs saw their hosts off at the main door where they wished their hosts good bye. The second plaintiff then went to the reception counter and asked for his key. Christopher Chiang the receptionist looked at the key slot but the key was not there. He said to the second plaintiff, "No key, Sir". The second plaintiff replied, "Just two hours ago I myself handed the key to you". Christopher Chiang then produced a duplicate key from a drawer and handed it to the second plaintiff. With this duplicate key the plaintiffs went up to their suite. On reaching the 26th floor, the second plaintiff was surprised to find a key in the key hole of the door to their suite. He used that key to open the door. To his great surprise he found that his suite had been ransacked. The suitcases had been forced open. The first plaintiff found that the contents of her crocodile handbag had disappeared. The handbag was still in the suitcase. It was empty except for the make-up kit. Her valuables were all gone. The first plaintiff's jewellery ornaments were all in the handbag and they were all missing. The second plaintiff also lost a number of articles including money and travellers cheques. The second plaintiff telephoned the manager of the hotel. He came right away. The chief of the security guard and the police also came. Investigations were carried out but nothing was recovered.

Investigations revealed that while the plaintiffs were away at lunch, a maid named Norhaini who was in the corridor of the 26th floor of the hotel, saw a male European come out of the lift. He went to the door of Suite 2626, which was the suite occupied by the plaintiffs, took out a key from his pocket, opened the door with it and entered the suite. She heard the door shut. This happening is conceded by the defendants.

Investigations revealed further that while the plaintiffs were at lunch, a waiter named Omar went to Suite 2626 to deliver a tray of fruit. He knocked on the door and also rang the bell. A few moments later a male European opened the door. Omar greeted him "Good afternoon" and told him that the fruits were being delivered with the compliments of the Management. The European replied "Thank you. Bring them in". Omar walked into the sitting room and placed the tray on the coffee table. The European went into the bedroom leaving Omar alone in the sitting room. After placing the fruits on the coffee table, Omar walked out and closed the door of the suite after him. This happening is again admitted by the defendants.

The male European who was seen by Norhaini entering the plaintiffs' suite and was also seen by Omar inside the suite when he went to deliver the fruits was no friend of the plaintiffs. He was the thief who broke open all the suitcases belonging to the plaintiffs and took away their valuables in respect of which this claim is made. It is admitted by the defendants that the thief gained entry into suite 2626 with the key which the second plaintiff had delivered to Christopher Chiang at the reception counter in the lobby of the hotel before going for lunch.

There is no evidence to show how the thief managed to get possession of the door key of the

plaintiff's suite. The plaintiffs say that the key had been surrendered to the defendants; that it was in their possession; and that the thief obtained possession of it through the negligence of the defendants in that they failed to take proper precautions to keep it safely. The defendants on the other hand contend that the thief obtained possession of the key through the negligence of the second plaintiff who left it on the reception counter instead of handing it to the receptionist Christopher Chiang and that the thief must have picked it up from the counter.

The second plaintiff's evidence is that he handed the key to Christopher Chiang and saw him place the key in the key slot. His evidence is corroborated by his wife the first plaintiff. She says that she was standing behind her husband and saw him hand the key to Christopher Chiang. The second plaintiff's evidence on this issue is also corroborated by Mrs. Lim. She says that she was also there, standing behind the second plaintiff and saw him hand the key to Christopher Chiang. It is suggested that the first plaintiff and Mrs. Lim who is a cousin of the first plaintiff are interested witnesses and that their evidence should not be given any weight. In particular, it is submitted that Mrs. Lim is clearly not a truthful witness because she told the court a falsehood in that when asked whether she had seen the plaintiffs between "April 1975 and their present visit" she replied "once" whereas she admitted to the witness Michael Ow that she had been living in Paris with the plaintiffs for six months in 1978. When Mr. Grimberg put this question to Mrs. Lim, I understood that he was asking her whether or not she had seen the plaintiffs in Singapore in between their visit in April 1975 and their visit in 1979 for this trial and I am certain that that is the sense in which Mrs. Lim understood the question. Accordingly her answer "once" means that she saw them once in Singapore. Later when Mr. Michael Ow gave evidence he told the court that while waiting outside the court for his turn to give evidence he had started a conversation with Mrs. Lim and that in the course of that conversation she told him that she had just returned from Paris and that she had been staying there with the plaintiffs for six months. I pointed out to Mr. Grimberg that this fact was never put to Mrs. Lim and that it was hearsay evidence and was accordingly inadmissible unless he recalled Mrs. Lim and put this evidence to her. I suggested that he should recall Mrs. Lim and ask her to explain her answer "once". Mr. Grimberg declined to do so on the ground that Mrs. Lim was not his witness and he saw no reason why he should do so. Under the circumstances Mr. Michael Ow's statement of what Mrs. Lim told him remains hearsay evidence. It does not prove that Mrs. Lim stayed in Paris with the plaintiffs. It does not prove that she is an unreliable witness. She impressed me as a truthful witness and I therefore accept her evidence.

Mr. Christopher Chiang's evidence relating to the delivery of the key is that he was alone on duty at the reception counter in the lobby when the second plaintiff came after 12 noon to surrender the key before going for his lunch. He explained that Miss Danker was not there as she had gone for her lunch. He saw the second plaintiff approaching the counter and placing the key on the counter four feet away from him. He says that he saw this when he glanced up and that he had been looking down selling stamps. He was selling stamps to several guests and did nothing to the key. He left it lying there on the counter for two or three minutes. After he had finished attending to the guests he looked at the key and saw four or five keys lying on the counter. He picked them up and put them in the chute box. He did not know whether the second plaintiff's key was one of the four or five which he picked up and put in the chute box. He explained that the second plaintiff was not the first person who left his key on the counter. When he placed his key on the counter there were already some keys lying on the counter. In due course he picked up all the keys from the chute box and placed them in their respective slots. He did not know if he put a key in the second plaintiff's slot. He picked up 70 or 80 keys from the chute box and put them back in their slots. He explained that the chute is commonly used by guests when they don't hand the key to the receptionist. He saw the second plaintiff again later that afternoon at about a quarter past 2 p.m. He came to the counter and asked for his room key. Chiang says that he looked into the slot 2626 but there was no key in it. He asked the second plaintiff whether his wife or his mother had taken the key and the second plaintiff replied that he did not know. As far as he could remember the second plaintiff was alone when he came to the counter. Chiang says that in order not to waste time he issued to the second plaintiff a duplicate key which he obtained from a drawer.

Christopher Chiang admitted under cross-examination that he could have stretched out his hand and picked up the second plaintiff's key which was four feet from him. He also admitted that he did not tell his lawyers, nor to the police and not even to his Management that he was busy selling stamps when the second plaintiff came to surrender his room key. He admitted further that if he does not pick up a key he keeps an eye on it and that it is very important that nobody takes it.

I find it difficult to accept Christopher Chiang's version. He did not impress me as a truthful witness. I accept the second plaintiff's version which is supported by the first plaintiff and by Mrs. Lim. I find it as a fact that the second plaintiff had handed the door key of his suite 2626 to Christopher Chiang before going for his lunch.

In my judgment, even if I were to accept Christopher Chiang's version (which of course I do not), it does not help the defendants. The key was placed within four feet of Christopher Chiang. He saw it being placed there. He could have picked it up and should have done so. The least he could do was to keep his eye on it and see that nobody else picked it up. There is no evidence that anybody else picked it up. In my opinion, from the moment the second plaintiff placed the key within four feet of Christopher Chiang, and it was there to his knowledge, the key was in the possession of the defendants through their servant Christopher Chiang. The second plaintiff had surrendered the key to the defendants and it was exclusively under the custody and control of the defendants. If somebody else picked it up from the counter

(of which there is no evidence at all), then the defendants were negligent through their servant Christopher Chiang in allowing that somebody to pick it up. It was a busy period. The Mandarin is a very large hotel with 600 rooms. Guests were going for lunch and leaving their keys at the reception counter. This appears to be common practice. Mr. Ow admitted that many guests throw their keys on the counter. He added: "My instructions are that receptionists should pick up keys immediately." Accordingly the defendants should have had more than one receptionist on duty there at that exceptionally busy time of the day. In my judgment, even on Christopher Chiang's version, the defendants were clearly negligent in not taking proper care of the key.

The claim of the plaintiffs is presented under two heads:

(1) against the defendants as innkeepers;

(2) against the defendants for negligence of themselves, their servants or agents.

The liability of an innkeeper is set out in Vol. 21 of *Halsbury's* Laws of England (3rd ed.) at page 457:

"If goods belonging to a guest for whom accommodation has been engaged are lost or stolen from or damaged in a hotel, the hotel proprietor in his capacity as an innkeeper is *prima facie* liable....

An innkeeper is not relieved from responsibility by the negligence of the guest, unless such negligence occasions the loss in the sense that the loss would not have occurred if the guest had used the ordinary care of a prudent man under the circumstances."

On the evidence already considered, in my opinion, the plaintiffs have clearly made out a *prima facie* case against the defendants on their liability as innkeepers and it remains for me to examine whether or not there was any negligence on the part of the plaintiffs sufficient to relieve the defendants of their liability.

In my opinion the plaintiffs have also made out a *prima facie* case based on the tort of negligence. When the second plaintiff handed the key of suite 2626 to Christopher Chiang at the reception counter in the lobby before going for lunch, he put it in charge of the defendants. The key gave access to the plaintiffs' suite and it was the duty of the defendants to take reasonable care to see that it was not taken by any unauthorised person. It was so taken and consequences followed which might reasonably have been foreseen — a thief used it to get into the plaintiffs' suite and steal. At common law the defendants are liable for that loss unless they prove that they took reasonable care of the key. They have not proved it. They have not shown how the key came to be taken by the thief.

It is submitted on behalf of the defendants that the plaintiffs themselves were guilty of negligence and that their negligence contributed to the theft. It is therefore necessary to examine the rest of the evidence to ascertain whether there was any act of negligence on the part of the plaintiffs and if there was, whether it was sufficient, first, to relieve the defendants altogether of their liability as innkeepers and secondly, whether it was contributory negligence sufficient to reduce to some extent the damages to be awarded to the plaintiffs for the negligence of the defendants.

It is submitted that the plaintiffs knew that the defendants provided special facilities for valuables to be locked up in their safe. The plaintiffs ignored these facilities and left jewellery, cash, unsigned travellers cheques and other articles worth, if they are to be believed, well over $600,000 in locked suitcases in their suite. It is submitted that they did so in the knowledge that in this day and age, thieving has become as sophisticated as most other professions and that in these circumstances the plaintiffs relieved the defendants of their common law duty as innkeepers.

The second plaintiff's explanation for not depositing his wife's jewellery in the hotel's safe is that he did not want to run the risk of letting people know that he was putting valuables in the hotel safe. He did not want to attract attention. When told that it was a simple matter to put valuables in a hotel's safe, he added, "In Saigon two people were killed and one wounded just because they put their valuables in the safety box". He explained that he admired the law and order in Singapore. He had stayed at the Mandarin in Singapore before and he admired the Mandarin Hotel Organisation for having security guards. He stated that he considered that "it was safer to keep the jewellery with us provided the hotel took good care of our key".

In *Carpenter* v. *Haymarket Hotel Ltd.*,[1] the plaintiff placed her diamond ring in a jewel case and placed that in her suitcase which she latched but did not lock. She then went with her husband for dinner and her husband locked the door of their room and took the key with him. After dinner they returned to their room and on leaving it to go to a dance, the plaintiff's husband again locked the door and then handed the key in at the hotel office. About 2.30 a.m. the following morning they returned to their room in the hotel, having got the key from the hall porter. On getting up between 8 and 9 a.m. the plaintiff opened her suitcase and jewel-case and found that the diamond ring was missing. The defendants were immediately informed of the loss and search was made for the ring, but without result. It was held that the plaintiff had taken reasonable care of the ring and accordingly that the loss of it was not due to negligence on her part; that the fact that she had not deposited the ring at the office in compliance with a notice warning guests that all articles of value should be deposited at the office did not imply that she had retained the protection of it in her own hands to the relief of the defendants; and therefore that she was entitled to judgment against the defendants in the action.

Mr. Grimberg submits that in *Carpenter's* case Swift J. could very easily have come to a different conclusion if the articles were of the value contended for in these proceedings. I am unable to accept this submission. In the present case, the articles were in a crocodile bag which was placed under some clothing in a suitcase which was locked. The room door was locked. The Mandarin is a modern luxury hotel and has security guards all over the place and this fact was known to and relied upon by the plaintiffs. The facts in the present case are much more in favour of the plaintiffs than the facts in *Carpenter's* case which in my opinion is entirely against the defendants

though they have endeavoured to get some help from it. The value of the goods in a luxury hotel with security guards is no evidence of negligence at all.

In *Shacklock* v. *Ethorpe Ltd.*,[2] which is a decision of the House of Lords, the plaintiff placed her jewels in a jewel-case which she locked. She then placed the jewel-case in a dressing-case which was provided with three locks, all of which she locked. She left the case under the luggage stand in her bedroom at an hotel owned by the defendants while she was absent from the hotel for some hours. On leaving the hotel she did not lock the door of her bedroom. It was held by the House of Lords that the fact that she did not lock the bedroom door and that she did not deposit the jewellery with the hotelkeeper for safe custody were not sufficient evidence that she failed to take the ordinary care which a prudent person would take, and the plaintiff was entitled to recover damages for her loss. In his speech Lord Macmillan stated, at page 375:

"I do not doubt that, if a guest takes jewels of exceptional value to an hotel, this does render it proper for him to take special precautions — for example, by locking his bedroom door, or depositing the articles with the hotelkeeper...."

Lord Macmillan is not to be understood to mean that guests must deposit articles of exceptional value with the hotelkeeper. In the present case the plaintiffs did take jewels of exceptional value to their bedroom but they did lock the door. They did hand in the key. Furthermore they locked the jewels in a suitcase with a combination lock which was broken open. The remarks of the House of Lords regarding the safe deposit box must be taken in the context that the door was left open in that case. The plaintiff in that case was not negligent even though she left the door open and there were no security guards. In the present case the door was firmly locked and there were security guards. So far from giving any comfort to the defendants it is apparent that *Shaclock's* case is completely against the contention of the defendants.

In my judgment, in the circumstances of this case, the failure of the plaintiffs to deposit their jewellery and other valuables in the safe deposit box of the defendants did not constitute negligence on their part.

Incidentally, in the Sunday Nation (a newspaper published in Singapore) of the 18th of February 1979 there is a news item that Anneke Gronloh the popular Dutch singer (of "Burong Kaka Tua" fame) reported to the police in Jakarta that she lost 16,000 guilders (some S$77,000) in cash. The money disappeared from the safe deposit box of Hotel Kartika Plaza which is one of the leading hotels in Jakarta. This news report appeared two days after this trial was concluded and I am not at all influenced by it in my decision but I am mentioning it just to show that safe deposit boxes in hotels are not as safe as they are made out to be. A spokesman of the hotel disclosed that a number of employees of the hotel had been detained and added "this has given us a bad image". Human nature being what it is, such a thing can happen in any hotel no matter how modern, large and luxurious it may be.

The defendants claim that the second plaintiff met a European in the lift to whom he gave his room number and invited him for a drink. It is suggested that this was a negligent act and that the said European was either the thief or his accomplice who must have picked up the door key of the plaintiffs' suite from the reception counter in the lobby after the second plaintiff left it there. All this has not been pleaded at all by the defendants. If this is what the defendants believe that had really happened, they should have pleaded it and proved it. They have not done so. In fact they knew nothing about the second plaintiff meeting a European in the lift until the second plaintiff disclosed it on hearing from the maid Norhaini that she had seen a European entering the suite. The second plaintiff says that all that he stated upon hearing from Norhaini that she had seen a European entering his suite was that he had met a European in the lift on the night of March 31, 1975 when they were coming up to the 26th floor after checking into the hotel. The second plaintiff denies giving his room number to the European in the lift and inviting him for a drink.

The first plaintiff's version regarding the European is as follows. While her husband was still at the reception counter completing the checking in arrangements, she and the second plaintiff's mother proceeded with two bell boys who were in charge of their luggage to the lift. When they got into the lift, a European also entered accompanied by another bell boy who was handling his luggage. The European said, "Hello" to the second plaintiff's mother in Vietnamese. He said "Chao Bah" which means "Good evening, Madam". Second plaintiff's mother replied to him in Vietnamese but he did not reply as he could not understand Vietnamese. She asked him if he had come from Saigon but the man uttered the word "Danang". The second plaintiff had not yet entered the lift. He was still writing on the reception counter. When the second plaintiff came into the lift, all of them went up in the lift. The second plaintiff did not speak to the European in the lift. It was not true that the second plaintiff told him his (second plaintiff's) suite number and that he invited the European to come and have a drink.

Immediately after the theft was reported to the Management, there was an investigation at the suite of the plaintiffs. Maids, waiters and security guards were questioned. As soon as it was discovered that the thief was a European, the police brought two Europeans to suite 2626. The plaintiffs recognised one of them as the European who had come up in the lift with them on the previous night. And both, the maid Norhaini and the waiter Omar stated that that was not the European they had seen entering suite 2626. The maid Janet who had also seen the European entering the plaintiffs' suite also stated that he was not the European she saw entering the suite. The police being satisfied that he had nothing to do with the theft, released the European. And yet at this trial, Vernon Aeria, the defendants' chief security officer claimed that that European was indeed the thief and must have feigned a limp and also must have been wearing a wig. In my opinion he is indulging in wild, childish speculation. He was there when the police were carrying out investigations. Why did he not tell all this to the police? He is trying to be clever long after the event. The police had very good reasons to release that European.

I accept the evidence of the two plaintiffs that the second plaintiff never gave the European in the lift his room number and that he did not invite him to go to his room for a drink. I also accept the evidence of Norhaini that the European whom the plaintiffs identified as the one they met in the lift on the previous night was not the one she saw entering suite 2626. Norhaini gave her evidence in English. She now works as a telex operator at another hotel. She is an independent witness. She impressed me as an intelligent young lady. She says that when the European came out of the lift she wished him "Good afternoon Sir". The European did not reply but merely smiled. She saw his face clearly. She says she considered his conduct unfriendly. She also noticed that he walked with a limp. She was very observant and in my opinion she made no mistake at all when she stated that the European identified by the plaintiffs as the one they met in the lift on the previous night was not the European she had spoken to and had seen entering suite 2626.

The waiter Omar was called by the defendants. He is still employed as a waiter at the Mandarin Hotel. He denied being called to suite 2626 after the theft was discovered. He stated that he learnt of the theft on the next day. Norhaini on the other hand says that when the two Europeans were brought to suite 2626 Omar was present there and did not identify them. Vernon Aeria the chief security officer of the defendants also says that Omar was present and did not identify the European who was identified by the plaintiffs as the one they had met in the lift the night before. In my opinion Omar has either forgotten or is not speaking the truth.

The suggestion that the thief or his accomplice had picked up the door key of suite 2626 from the reception counter does not bear examination. The Mandarin door key has no number on the tag. This is for security reasons so as no one will see it. The number is stamped on the key. According to Christopher Chiang's version, the second plaintiff left his door key on the reception counter where there were already four or five keys lying. It is a million to one chance that anyone could have picked up the key to the plaintiffs' suite from those five or six keys even with very good eyesight. It goes further: that person was unnoticed. Could anybody be so daring as to pick up a key four feet away from Christopher Chiang and run the risk of being caught? The truth of the matter is that the defendants realised that if Christopher Chiang had taken the key and put it in the slot, the story about the European would still not be sufficient to relieve them of liability. The question would still be asked, how did the European get the key. My finding, as already stated, is that the key was handed to Christopher Chiang who placed it in its slot. The question still arises, how did the thief get the key? There is only one answer. He must have obtained it from the key slot through the help or negligence of the defendants' staff because earlier three persons had seen Christopher Chiang keep the key in the key slot.

The defendants have pleaded that they are entitled to the protection of section 3 of the Innkeepers Act and that their liability if any is limited to $500 to each plaintiff. In order to avail themselves of these limitation provisions, which in any event do not apply if there is negligence on the part of the defendants, a notice in the terms of section 3 of the Act must be exhibited. The defendants conceded at the trial that no such notice was exhibited and accordingly abandoned this defence.

The defendants have also pleaded that "if the plaintiffs had with them the jewellery and other articles alleged, the defendants are not liable for their loss by reason of the terms of the contract between the plaintiffs and the defendants, which expressly exempted the defendants from liability for any loss of valuables left in the plaintiffs' room". They base this defence on the words printed on the Registration Card which was signed by the second plaintiff when the plaintiffs checked into the hotel. The words are:

"The Management is not responsible for any loss of valuables in guests' rooms. Please utilize our safe-deposit boxes provided for you without charge at the front-office."

These words are printed in red block letters on the left hand side of the registration card, away and separate from the area where the guest has to fill in his particulars.

This defence again is not available to the defendants on the authority of *Williams* v. *Linnitt*.[3] The majority judgment in that case is that the innkeeper's liability at common law as an insurer of his guest's property is something out of which he cannot contract. When Mr. Grimberg's attention was drawn to this case, he abandoned this defence.

The defendants also rely on a Notice which they say is placed in all rooms in their hotel and which they call the "Tent" notice because it is in the form of a tent and is placed on a table in the room. The wording of this Notice is as follows:—

"Dear Guest:

Welcome to The Mandarin! We sincerely hope that your stay with us will be a pleasant one.

As an additional service to our valued guests, safe deposit boxes are available without charge at the lobby for our guests to utilize whenever necessary.

We would therefore kindly request you to leave your valuables and cash in one of the safe deposit boxes whenever you leave your room.

Many thanks.

The Management."

The defendants say that inspite of this warning items of great value were left unattended in their suite by the plaintiffs and therefore they are guilty of contributory negligence. There is no evidence at all that the plaintiffs saw this warning. In any case the first plaintiff who is the owner of all the valuable jewellery that was lost does not read English. However, she readily admitted that she knew there was a safe deposit box in the hotel.

The defence of contract has been specifically abandoned in this case. At the highest this Notice in the room was, as pointed out by Lord Denning in *Olley v. Marlborough Court, Ltd.*,[4] a mere warning to the plaintiffs that they must do their part to take care of their things themselves. As previously stated there is no evidence that the first plaintiff saw this warning. In any case the plaintiffs were entitled to expect that the defendants would take reasonable

care of the door key of their suite and for that reason it was reasonable on the facts of this case for the plaintiffs to leave their valuables in their locked suitcases in their suite which was locked. In my judgment this did not constitute contributory negligence.

The liability of an innkeeper for the loss of his guests' property has been clearly laid down by Erle J. when delivering the judgment of the Court of King's Bench in *Cashill v. Wright:*[5]

"...We think that the rule of law resulting from all the authorities is that, in a case like the present, the goods remain under the charge of the innkeeper and the protection of the inn, so as to make the innkeeper liable as for breach of duty unless the negligence of the guest occasions the loss in such a way as that the loss would not have happened if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances...."

Earlier, in the course of the arguments, Lord Campbell C.J. pointed out, at page 1098:

"the negligence, to constitute a defence, must be a negligence without which the loss would not have happened."

There is no act on the part of the plaintiffs conducing to the loss or without which the loss would not have happened.

Mr. Grimberg submits that the theft was the result of the first plaintiff's ostentatious display of her jewellery. There is no evidence of this at all.

I find that there is no evidence that the plaintiffs did any act which can be said to constitute negligence on their part. The loss of their valuables was solely caused by the negligence of the defendants who did not take proper care of the door key to the plaintiffs' suite. In my judgment, on the evidence in this case, the plaintiffs are entitled to succeed in their claim.

I now come to the most difficult part of the case, the assessment of damages. The plaintiffs in their statement of claim have given the following particulars of their loss:

Jewellery owned by the first plaintiff

1 round jade pendant with platinum chain	U.S.$ 30,000
1 clover leaf jade pendant with platinum chain	5,000
1 jade ring with diamond setting - - -	5,000
1 pair of diamond earrings, single stone of 2½ carats, total 5 carats - - - -	60,000
1 solitaire diamond ring 6 carats - - -	120,000
5 platinum bracelets - - - - -	2,000
1 jade ring with diamond setting - - -	5,000
1 jade brooch with diamond setting - - -	5,000
1 pair of jade earrings with diamond setting -	3,000
2 jade statuettes 6" high (antiques) - - -	5,000
2 jade bracelets with diamond setting - -	10,000
	U.S.$250,000

The first plaintiff claims the sum of $610,000 which is equivalent to US$250,000.

Property lost by second plaintiff

Twenty traveller's cheques of U.S.$100 each equivalent to - - - - - - - -	S$4,880.00
Yen 70,000 which is equivalent to - - -	588.00
French Francs 230 which is equivalent to -	126.50
U.S.A. bank notes $80 which is equivalent to -	195.20
	S$5,789.70

The second plaintiff says that he also lost Swiss francs and Hong Kong dollars but cannot give their amount. He says that he also lost a bottle of Yve St. Lament perfume made in France. Its purchase price is not stated.

The plaintiffs also claim the cost of replacing three suitcases and they have produced a purchase receipt showing that the three suitcases cost $590.30.

The main difficulty is in placing a value on the property lost by the first plaintiff. She has not produced any purchase receipt. All the articles having been lost they cannot be valued by inspection. The value placed on the articles is entirely that of the first plaintiff. She did call a stone setter from Paris who had at one time done some minor repairs on two of the articles, a solitaire diamond ring and a pair of diamond earrings and he places the same value on these two articles which the first plaintiff had done in her letter to the defendants about a week after the theft. Is this a coincidence or is Mr. Tran the stone setter trying to assist the first plaintiff? He is not a diamond merchant and not even a dealer in diamonds in the sense that he buys and sells diamonds of small value in the retail trade. The plaintiffs also called Mr. Sena, a well-known jeweller of 50 years experience but Mr. Sena not having seen the articles in question was not of much help either to the plaintiffs or to the court. He gave evidence as to how diamonds are classified and valued in the international trade in diamonds. There is no dispute on this between Mr. Sena and Mr. Pinsler, a diamond merchant called by the defendants. An internationally recognised grading system as to colour and clarity exists and if a diamond dealer is given a technically correct and complete description, he can place a value on a diamond by reference to the grading system and the price prevailing at the relevant time. There is no such evidence in this case. Mr. Tran did issue to the plaintiffs a valuation certificate which has been produced but it is in my judgment a totally unsatisfactory certificate. He has left out of his so-called certificate references to the very aspects of a diamond which determines its value — the height (depth), clarity and colour and weight is only referred to approximately. I accept the submission made on behalf of the defendants that this certificate is of no help and is to all intents and purposes valueless. Mr. Tran's opinion is therefore rejected and the first plaintiff's valuation of her lost jewellery remains totally unsupported by any other evidence.

In my opinion the true value of the first plaintiff's jewellery and other valuables which she lost is that which the plaintiffs stated immediately after the theft was discovered. The second plaintiff estimated the value of their jewellery at U.S.$100,000. He told this to Mr. Ow and Mr. Rosemond, representing the hotel Management, to Mr. Aeria the chief security officer and to the police. The second plaintiff admits this. His explanation is that in his state of panic he did not know the real value of his wife's jewellery. The first plaintiff says that she was confused. She says that later that day after checking all the lost items, she told her husband the second plaintiff that the value of her lost jewellery was nearer U.S.$250,000. She admits that she and her husband did not call the police or the hotel and tell them of their mistake. She says that she did not do it because she had panick-

ed. She did not do it later because the hotel Management told her not to tell anybody and that she would be compensated for her loss. The first plaintiff identified Mr. Goh Koh Pui as the person who told this to her. Mr. Goh was called by the defendants. He denied the allegation. I accept Mr. Goh's evidence.

On April 2, 1975 i.e. the day after the theft the second plaintiff saw Mr. Aeria again. The second plaintiff went to Mr. Aeria's office and told him that in addition to the articles of jewelry already reported lost, he wanted him to note additional items that they had since discovered were also lost. These were a pair of earrings and some clothing material. Mr. Aeria says that the second plaintiff did not talk about the value of all the articles that had been lost. The second plaintiff had an opportunity to correct the so-called mistake and place on record that the value of the jewellery lost was US$250,000 and not US$100.000 as previously reported but he did not do this.

In my judgment, on the evidence in this case, the first plaintiff is entitled to recover from the defendants the sum of U.S.$100,000 for all her property that was stolen from suite 2626 of the defendants' hotel on April 1, 1975.

The second plaintiff is entitled to recover all that he claims save and except that in respect of the lost traveller's cheques he is entitled to recover only U.S. $1,600 which is the amount he is now being called upon to refund to the American Express Co. who had earlier reimbursed him with the full amount of U.S.$2,000. Accordingly he is entitled to S$3,904 only in respect of the traveller's cheques.

The plaintiffs are also entitled to recover $590.30 being the cost of replacing their three suitcases which were broken open by the thief.

Accordingly there will be judgment for the plaintiffs against the defendants in the sum of S$249,404 which is made up as follows:—

First plaintiff	— U.S.$100,000 =	S$244,000.00
Second plaintiff		4,813.70
Suitcases		590.30
		S$249,404.00

The defendants will pay the plaintiffs' costs of this action as taxed.

Judgment for the plaintiffs.

Solicitors: *Ong & Chellam.*

SINGAPORE WOODCRAFT MANUFACTURING CO. (PTE.) LTD. v. MOK AH SAI

[O.C.J. (Choor Singh J.) April 23, 1979]

[Singapore — Civil Suit No. 3348 of 1976]

Contract — Frustration — Impossibility of performance — Claim for refund of money paid under agreement — Frustrated Contracts Act (Cap. 33), s. 2(1) — Law Reform (Frustrated Contracts) Act, 1943 (U.K.), s. 1.

Landlord and Tenant — Land Acquisition — Notice of Possession served on landlord — Effect of — Land Acquisition Act (Cap. 272), ss. 16(1), 18 & 47.

The defendant in this case was the tenant of premises known as Nos. 110/112 Orchard Road, Singapore. He paid a monthly rent of $215 to the owners of the property. By an agreement dated November 21, 1968, the defendant had agreed to permit the plaintiffs to display for sale at the premises goods, wares and merchandise belonging to the plaintiffs in return for commission of 2½% on all goods sold to be calculated every six months or if the amount of commission so payable for the same period fell below the sum of $9,000, the plaintiffs were to make it up to that sum. The contract was for ten years and there was no provision in the contract for earlier termination.

Evidence revealed that the defendant took no part in the business of the plaintiffs. Instead, he consistently throughout the whole period up to December 31, 1975 received the sum of $1,500 per month from the plaintiff.

On May 23, 1975 the Collector of Land Revenue by Notice of Possession served on the defendant's landlord, took possession of the premises. He did not take physical possession of the premises until December 31, 1977. In the meantime the plaintiffs continued to occupy the premises and to pay the defendant $1,500 per mensem until December 31, 1975 when they stopped upon discovering that the premises had vested in the State as far back as May 23, 1975.

The main issue before the court was the date on which the contract was frustrated. The plaintiffs claimed that it was frustrated on May 23, 1975 and the defendant argued that the contract was frustrated on December 31, 1977.

Held: (1) the agreement of November 21, 1968 was a device to conceal a sub-tenancy agreement between the parties at the monthly rent of $1,500. The agreement was drawn up to circumvent the application of the Control of Rent Act which prohibits a tenant from collecting from his sub-tenant more than 110% of the rent which he himself pays to his landlord;

(2) the correct legal test for deciding whether a contract has been frustrated is whether the contract which the parties made is, on its true construction, wide enough to apply to the new situation: if it is not, then it is at an end;

(3) in this case, whatever rights the defendant had in the premises were extinguished on May 23, 1975 when the State became the owner of the premises;

(4) the footing on which the agreement was entered into was gone and the contract clearly was frustrated.

Case referred to:-

(1) *Davis Contractors Ltd.* v. *Fareham Urban District Council* [1956] A.C. 696.

CIVIL SUIT.

Kirpal Singh for the plaintiffs.

P.T. Wong for the defendant.

Choor Singh J.: The plaintiffs' claim against the defendant is for the refund of a deposit of $18,000 paid by the plaintiffs to the defendant under an agreement between the parties in writing dated November 21, 1968 and for the refund of a further sum of $10,838.70 paid by the plaintiffs to the defendant under the said contract which the plaintiffs allege is repayable to them: